

DIVISION III

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JUDGE DAVID M. GLOVER

CACR05-762

June 28, 2006

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT  
[CR200-233 I]

JOHN EDWIN GARVER  
APPELLANT

HONORABLE JOHN HOMER  
WRIGHT, CIRCUIT JUDGE

V.

STATE OF ARKANSAS  
APPELLEE

REBRIEFING ORDERED

In September 2003, appellant, John Garver, pleaded guilty to the offense of failure to appear, a Class C felony, in Garland County Case CR2003-233. His plea in that case was part of a negotiated settlement that also involved two other cases. For purposes of this appeal, we are concerned only with the instant revocation in case number CR2003-233 I. As part of the original plea, appellant was placed on supervised probation for a period of five years subject to certain designated conditions, including that he was not to commit a criminal offense punishable by imprisonment and that he was not to use, sell, distribute, or possess any controlled substance. On November 1, 2004, appellant's probation officer filed a violation report, alleging that appellant had violated the above two conditions of his probation in that he was found to be in possession of a controlled substance and to have possessed or used drug paraphernalia. On November 12, 2004, the State filed a petition to show cause why appellant's probation should not be revoked. Following a hearing, the trial court determined that appellant had violated the conditions

of his probation and therefore revoked it. As part of his sentence, appellant was fined \$100 and sentenced to twenty-four months in the Arkansas Department of Correction.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's counsel filed a motion to withdraw on the ground that this appeal is wholly without merit. This type of motion must be accompanied by an abstract and brief referring to everything in the record that might arguably support an appeal, including all motions, objections, and requests decided adversely to appellant, and a statement of reasons why none of those rulings would be a meritorious ground for reversal. Appellant was provided with a copy of his counsel's brief and was notified of his right to file a list of points on appeal within thirty days, but he has not done so. However, because appellant's counsel has not satisfied the requirements of our Rule 4-3(j), we order rebriefing.

The only adverse ruling that appellant's counsel addresses in the argument section of the "no-merit" brief is the revocation of the probation itself. Specifically, counsel contends that there was sufficient evidence to support the trial court's conclusion that appellant violated the conditions of his probation and that revocation was therefore justified. Even though appellant did not challenge the sufficiency of the evidence at the revocation hearing, it was not necessary to do so in order to preserve the issue for appeal. *Nelson v. State*, 84 Ark. App. 373, 141 S.W.3d 900 (2004). Consequently, appellant's counsel was correct in addressing the issue. However, our review of the record reveals two additional adverse decisions that were not addressed by appellant's counsel.

Therefore, we remand this case and order rebriefing in accordance with *Anders, supra*, and our Rule 4-3(j).

Rebriefing ordered.

NEAL and ROAF, JJ., agree.